



# Criminal Law Amendment Act 1945

Reprinted as in force on 1 January 2005

Reprint No. 2E<sup>\*</sup>

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the Office of the Queensland Parliamentary Counsel  
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\* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. The content has not changed.

# Information about this reprint

This Act is reprinted as at 1 January 2005. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

**Replacement reprint date** If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



## Queensland

# Criminal Law Amendment Act 1945

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# **Criminal Law Amendment Act 1945**

[as amended by all amendments that commenced on or before 1 January 2005]

**An Act to make further provision for, the treatment and punishment of offenders convicted of sexual offences, and for other purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Criminal Law Amendment Act 1945*.

### **2A Interpretation**

(1) In this Act—

*offence of a sexual nature* includes any offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over the offender's sexual instincts and any offence in the circumstances associated with the committal whereof the offender has exhibited a failure to exercise such proper control over the offender's sexual instincts, and includes an assault of a sexual nature.

(2) This section shall be read as one with the Criminal Code and the *Justices Act 1886*.



- (5) It shall be the duty of a probation officer, subject to the direction of the court or justices—
- (a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think fit;
  - (b) to see that such person observes the conditions of the person's recognisance;
  - (c) to report to the court or justices as to such person's behaviour;
  - (d) to advise, assist, and befriend such person, and, when necessary, to endeavour to find such person suitable employment.
- (6) A probation officer shall be entitled to be paid such salary or to receive such remuneration for acting under a probation order as the Governor in Council directs, and may in either case be paid such out-of-pocket expenses as may be allowed by the Governor in Council.

## **Part 3**

# **Indeterminate detention of offenders convicted of sexual offences**

### **18 Detention of persons incapable of controlling sexual instincts**

- (1) In any case where a person has been found guilty of an offence of a sexual nature committed upon or in relation to a child under the age of 16 years—
- (a) if such person was found so guilty on indictment—the judge presiding at the trial of such person for that offence may at the judge's discretion direct that 2 or more medical practitioners named by the judge (of whom 1 shall be a person registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the speciality of psychiatry where the judge

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is of opinion that the services of such a person are reasonably available), inquire as to the mental condition of the offender, and in particular whether the offender's mental condition is such that the offender is incapable of exercising proper control over the offender's sexual instincts; or

- (b) if such person was found so guilty on summary conviction—the Magistrates Court before which the charge was heard, in addition to or before sentencing such person to any lawful punishment, may order that such person be brought before a judge of the Supreme Court with a view to such person being dealt with by such judge as prescribed by paragraph (a).
- (1A) In the case of an order made under subsection (1)(b) before sentence, the Magistrates Court shall make such adjournments as are necessary and shall commit the convicted person to a corrective services facility or watch-house, until such person has been dealt with by a judge as hereinafter prescribed in this section and thereafter may (in the cases provided for in subsection (3B) or (6)(d) or in cases where the judge refuses to direct detention under either of the subsections), sentence such person to any lawful punishment.
  - (2) The medical practitioners shall conduct the inquiry by means of personal examination and observation of the offender and by reference to the depositions and such other records relating to the offender as they think necessary, and shall give their report on oath to the judge.
  - (3) If the medical practitioners report to the judge that the offender is incapable of exercising proper control over the offender's sexual instincts the judge may, either in addition to or in lieu of imposing any other sentence where the offender was convicted on indictment, or in addition to the punishment (if any) imposed or to be imposed by the Magistrates Court where the offender was summarily convicted, declare that the offender is so incapable and direct that the offender be detained in an institution during Her Majesty's pleasure.
  - (3A) However, the offender shall be entitled to cross-examine such medical practitioners in relation to and to call evidence in rebuttal of such report, and no such order shall be made unless the judge shall consider the matters reported to be proved.

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- (3B) When an offender whom a judge directs under subsection (3) to be detained was summarily convicted and the decision with respect to the lawful punishment to be awarded was reserved, such offender shall, unless the judge when so directing otherwise orders (which order is hereby authorised to be made by the judge) again be brought before the Magistrates Court in terms of the adjournment made by that court for sentence.
- (4) In any case where 2 medical practitioners, 1 of whom is registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the specialty of psychiatry, report to the Attorney-General that any person who is serving a sentence of imprisonment imposed upon the person for an offence of a sexual nature (whether committed upon or in relation to a child under the age of 16 years or upon or in relation to a person over that age)—
- (a) is incapable of exercising proper control over the person's sexual instincts; and
  - (b) that such incapacity is capable of being cured by continued treatment; and
  - (c) that for the purposes of such treatment it is desirable that such person be detained in an institution after the expiration of the person's sentence of imprisonment;
- the Attorney-General may cause an application to be made to a judge of the Supreme Court for a declaration and direction in respect of such person as prescribed by subsection (3).
- (4A) Upon such application the medical practitioners shall report to the judge upon oath and the prisoner shall be entitled to cross-examine such medical practitioners in relation to and to call evidence in rebuttal of such report, and no such order shall be made unless the judge shall consider the matters reported to be proved.
- (5) Every offender or prisoner in respect of whom a direction is given under subsection (3) or (4)—
- (a) shall be detained in such institution as the Governor in Council directs, and until the Governor in Council gives a direction as to such institution, in a corrective services facility or watch-house; and

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- (b) shall not be released until the Governor in Council is satisfied on the report of 2 medical practitioners that it is expedient to release the offender or prisoner.
- (6) If the medical practitioners report to the judge that the offender or, in the case of an application made under subsection (4) the judge is of the opinion that the prisoner, is not incapable of exercising proper control over his or her sexual instincts, but that his or her mental condition is subnormal to such a degree that he or she requires care, supervision and control in an institution either in his or her own interests or for the protection of others, and the judge after considering the report and any evidence submitted in rebuttal thereof is of opinion that the offender requires such care, supervision, and control, the judge may—
- (a) direct that the offender or prisoner be detained in an institution either for such period as the judge directs or during Her Majesty's pleasure; or
  - (b) where the offender was convicted on indictment—pass sentence on the offender and in addition direct as mentioned in paragraph (a); or
  - (c) where the offender was summarily convicted and lawful punishment imposed by a Magistrates Court in addition direct as mentioned in paragraph (a); or
  - (d) where the offender was summarily convicted and the decision with respect to the lawful punishment to be awarded was reserved—direct, as mentioned in paragraph (a), but in such case the prisoner shall, unless the judge when so directing otherwise orders (which order is hereby authorised to be made by the judge), again be brought before the Magistrates Court in terms of the adjournment made by that court for sentence.
- (6A) Every offender or prisoner in respect of whom such a direction is given—
- (a) shall be detained in such institution as the Governor in Council directs, and, until the Governor in Council gives a direction as to such institution, in a corrective services facility or watch-house; and

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- (b) where the detention ordered is during Her Majesty's pleasure—shall not be released until the Governor in Council is satisfied, on the report of 2 medical practitioners, that the offender or prisoner is fit to be at liberty.
- (7) Where the judge orders detention during Her Majesty's pleasure in addition to imprisonment or in the case of a prisoner the detention shall commence forthwith upon the expiration of the term of imprisonment.
- (7A) In all other cases it shall commence forthwith upon the making of such order.
- (8) An offender or prisoner detained under this section shall be examined at least once in every 3 months by the director of mental health or by a medical practitioner appointed by the director of mental health (who is hereby authorised to make such appointment) to conduct examinations under this subsection, either generally or of a particular offender or prisoner.
- (8A) A medical practitioner making an examination under subsection (8) shall forthwith furnish a report of the examination to the chief executive of the department in which the *Health Services Act 1991* is administered.
- (9) An offender or prisoner detained in an institution pursuant to this section may be removed at any time to another institution by order of the chief executive of the department in which the *Health Services Act 1991* is administered.
- (9A) Moreover, the provisions of the *Corrective Services Act 2000*, section 53,<sup>1</sup> shall, subject to all necessary modifications, apply to and in respect of any such offender or prisoner.
- (11) The provisions of this section may by order of a judge made on the application of a Crown law officer be applied in any or every respect to any offender who, before the passing of this section, was found guilty either on summary conviction or on indictment, of an offence of a sexual nature committed upon or in relation to a child under the age of 16 years and who, at

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1 *Corrective Services Act 2000*, section 53 (Transfer to another facility or a health institution)

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the passing of this section, is undergoing, or subject to be sentenced to, imprisonment for such offence.

(12) The Governor in Council may from time to time make all such regulations as appear necessary for giving effect to this section and particularly for giving effect to the provisions of this section as respects orders made under this section by Magistrates Courts.

(13) For the purposes of the Criminal Code, chapter 67<sup>2</sup>—

(a) an offender or prisoner directed to be detained in an institution pursuant to this section shall be deemed to be a person convicted on indictment and such direction shall be deemed to be a sentence; and

(b) a refusal by a judge of the Supreme Court to direct any offender or prisoner to be detained in an institution pursuant to this section shall, as respects the right of appeal had by the Attorney-General under chapter 67, be deemed to be a sentence.

(14) In this section—

***corrective services facility*** see *Corrective Services Act 2000*, schedule 3.

***institution*** means—

(a) a corrective services facility or watch-house; or

(b) another institution prescribed under a regulation to be an institution for this section.

***release*** means unconditional release and does not include release under part 3A.

## Part 3A Conditional release of offenders detained under pt 3

### 18A Definitions for pt 3A

In this part—

*corrective services officer* means a person who holds an appointment as a corrective services officer under the *Corrective Services Act 2000*, section 201.

*detainee* means an offender or prisoner who is detained in an institution during Her Majesty's pleasure under a direction under section 18(3), (4) or (6).

*institution* see section 18.

*post-prison community based release order* see the *Corrective Services Act 2000*, schedule 3.

*Queensland board* means the Queensland Community Corrections Board established under the *Corrective Services Act 2000*, section 156.

### 18B Post-prison community based release orders under Corrective Services Act 2000

- (1) The *Corrective Services Act 2000*, chapter 5<sup>3</sup> applies to a detainee, subject to this part, as if—
- (a) instead of being detained at Her Majesty's pleasure, the detainee were a prisoner serving a term of life imprisonment (a *notional term of life imprisonment*) to whom the Criminal Code, section 305(2) does not apply;<sup>4</sup> and
  - (b) for a detainee whose detention began under section 18(7) at the end of a term of imprisonment (an *original term of imprisonment*)—the detainee began to serve the notional term of life imprisonment when the detainee began to serve the original term of imprisonment; and

<sup>3</sup> *Corrective Services Act 2000*, chapter 5 (Post-prison community based release)

<sup>4</sup> See the *Corrective Services Act 2000*, section 135(2)(b) (When order starts).

- (c) for a detainee whose detention began under section 18(7A) when the judge ordered the detention—the detainee began to serve the notional term of life imprisonment when the judge ordered the detention.
- (2) If a detainee committed the relevant offence before 1 July 1997, the *Corrective Services Act 2000*, chapter 5 applies to the detainee as if the period of 15 years mentioned in section 135(2)(b) of that Act were a period of 13 years.
- (3) In this section—  
*relevant offence* means—
  - (a) for a detainee dealt with by a judge under section 18(1)—the offence mentioned in section 18(1) of which the detainee was found guilty; or
  - (b) for a detainee about whom an application was made under section 18(4)—the offence mentioned in section 18(4) for which the detainee was serving a sentence of imprisonment.

### **18C No exceptional circumstances parole order**

A detainee may not apply for or be granted an exceptional circumstances parole order under the *Corrective Services Act 2000*, chapter 5.

### **18D Submissions by Attorney-General**

- (1) If a detainee applies to the Queensland board for a post-prison community based release order, the Queensland board must give the Attorney-General a copy of the application.
- (2) The Attorney-General may make written submissions to the Queensland board in relation to the application.
- (3) The Queensland board must consider any submissions by the Attorney-General when deciding whether to grant the application.

**18E Additional test for conditional release**

The Queensland board must not grant a detainee a post-prison community based release order unless, in addition to any other matter of which the Queensland board must be satisfied under the *Corrective Services Act 2000*, the Queensland board is satisfied the detainee does not represent an unacceptable risk to the safety of others.

**18F Additional conditions may be imposed**

A post-prison community based release order for a detainee may, in addition to any other conditions, contain conditions the Queensland board considers reasonable requiring the detainee to—

- (a) submit to medical, psychiatric or psychological treatment; or
- (b) report for drug testing to a corrective services officer.

**18G Detainee deemed a prisoner for offence of being unlawfully at large**

To remove any doubt, it is declared that a detainee released under this part is a prisoner for the *Corrective Services Act 2000*, section 94(j).

**18H Effect on unconditional release**

- (1) To remove any doubt, it is declared that nothing in this part prevents the unconditional release of a detainee under section 18(5)(b) or (6A)(b).
- (2) If a detainee released under this part is unconditionally released under section 18(5)(b) or (6A)(b), the effect of this part ends in relation to the detainee.

## Part 5 Transitional provisions

### 23 Transfer of reporting obligations to Offender Reporting Act

- (1) This section applies to a person who was subject to a reporting order under section 19<sup>5</sup> immediately before the commencement of this section.
- (2) The person is no longer subject to the order.
- (3) However, part 4, as in force immediately before the commencement of this section, applies to the person if the person is prosecuted for an offence against section 19(5) or 20(6) that was committed before the repeal of that part.
- (4) If the person has—
  - (a) appealed against the making of the order under section 19(6); or
  - (b) applied to have the order revoked under section 19B(1); the appeal or application is terminated.
- (5) If the person had any expectation of being able—
  - (a) to appeal against the making of the order under section 19(6); or
  - (b) to apply to have the order revoked under section 19B(1); the expectation is extinguished.
- (6) In this section—

*expectation* includes right, privilege, entitlement and eligibility.

*Offender Reporting Act* means the *Child Protection (Offender Reporting) Act 2004*.

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5 Section 19 (Sexual offender to report name and address)

## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2005. Future amendments of the Criminal Law Amendment Act 1945 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1989 Act No. 17	3 July 1989	8 February 1996
1A	1997 Act No. 82	5 December 1997	30 January 1998
1B	1998 Act No. 41	21 December 1998	19 March 1999
2	1999 Act No. 87	14 February 2000	3 March 2000
2A	2001 Act No. 7	1 July 2001	15 February 2002
2B	2001 Act No. 7	1 March 2002	8 March 2002

Reprint No.	Amendments included	Effective	Notes
2C	2002 Act No. 23	19 July 2002	
2D	2003 Act No. 3	1 May 2003	
2E	2004 Act No. 52	1 January 2005	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Criminal Law Amendment Act 1945 9 Geo 6 No. 11**

date of assent 5 April 1945

commenced on date of assent

amending legislation—

### **Criminal Law Amendment Act 1946 11 Geo 6 No. 6 ss 2–3**

date of assent 20 December 1946

commenced on date of assent

### **Criminal Code, Evidence Act and Other Acts Amendment Act 1989 No. 17 pt 4**

date of assent 30 March 1989

commenced 3 July 1989 (proc pubd gaz 24 June 1989 p 1821 as amd by proc pubd gaz 1 July 1989 p 2190)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1, 3 sch**

date of assent 5 December 1997

commenced on date of assent

**Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

**Criminal Law Amendment Act 1999 No. 87 pts 1–2 s 11 sch**

date of assent 14 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 14 February 2000 (2000 SL No. 23)

**Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 88)

**Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

**Criminal Law Amendment Act 2002 No. 23 ss 1–2(1), (3), pt 4, s 3 sch**

date of assent 23 May 2002

ss 1–3 commenced on date of assent (see s 2(1))

remaining provisions commenced 19 July 2002 (2002 SL No. 157)

**Sexual Offences (Protection of Children) Amendment Act 2003 No. 3 ss 1, 2(2), pt 4**

date of assent 4 March 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2003 (2003 SL No. 52)

**Child Protection (Offender Reporting) Act 2004 No. 52 ss 1–2, pt 7 div 2**

date of assent 29 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2005 (2004 SL No. 295)

## 7 List of annotations

**Title** amd R1 (see RA s 7(1)(k))**Parts of Act****s 2** om R1 (see RA s 36)**Interpretation****prov hdg** sub 2002 No. 23 s 3 sch**s 2A** ins 1946 11 Geo 6 No. 6 s 2

**PART II—AMENDMENTS OF “THE CRIMINAL CODE”****pt II (s 3)** om R1 (see RA s 37)**(ss 4–13)** om R1 (see RA s 40)**PART III—AMENDMENTS OF “THE JUSTICES ACTS, 1886 TO 1942”****pt III (s 14)** om R1 (see RA s 37)**(ss 15–16)** om R1 (see RA s 40)**PART 2—PROBATION OF OFFENDERS CONVICTED OF SEXUAL OFFENCES****pt hdg** amd 1999 No. 87 s 11 sch

(prev pt 4) renum 1999 No. 87 s 11 sch

**Probation orders in cases of sexual offences****s 17** amd 2004 No. 52 s 89**PART 3—INDETERMINATE DETENTION OF OFFENDERS CONVICTED OF SEXUAL OFFENCES****pt hdg** ins 1999 No. 87 s 11 sch**Detention of persons incapable of controlling sexual instincts****s 18** amd 1946 11 Geo 6 No. 6 s 3; 1989 No. 17 s 69; 1997 No. 82 s 3 sch; 1998 No. 41 s 14(1) sch 1; 1999 No. 87 s 11 sch; 2000 No. 63 s 276 sch 2; 2001 No. 7 s 302 sch 2; 2002 No. 23 s 35**PART 3A—CONDITIONAL RELEASE OF OFFENDERS DETAINED UNDER PT 3****pt hdg** ins 2002 No. 23 s 36**Definitions for pt 3A****s 18A** ins 2002 No. 23 s 36**Post-prison community based release orders under Corrective Services Act 2000****s 18B** ins 2002 No. 23 s 36**No exceptional circumstances parole order****s 18C** ins 2002 No. 23 s 36**Submissions by Attorney-General****s 18D** ins 2002 No. 23 s 36**Additional test for conditional release****s 18E** ins 2002 No. 23 s 36**Additional conditions may be imposed****s 18F** ins 2002 No. 23 s 36**Detainee deemed a prisoner for offence of being unlawfully at large****s 18G** ins 2002 No. 23 s 36**Effect of unconditional release****s 18H** ins 2002 No. 23 s 36**PART 4—SEXUAL OFFENDERS TO REPORT****pt hdg** ins 1999 No. 87 s 11 sch

om 2004 No. 52 s 90

**Sexual offender to report name and address**

**prov hdg** amd 1999 No. 87 s 4(1)  
**s 19** ins 1989 No. 17 s 70  
 amd 1999 No. 87 s 4(2)–(5); 2003 No. 3 s 21  
 om 2004 No. 52 s 90

**Requirements under reporting order**

**s 19A** ins 2003 No. 3 s 23  
 om 2004 No. 52 s 90

**Application for revocation of order**

**s 19B** (prev s 19A) ins 1999 No. 87 s 5  
 renum 2003 No. 3 s 22  
 om 2004 No. 52 s 90

**Disclosure of offences of sexual nature and other relevant information**

**prov hdg** amd 1999 No. 87 s 6(1)  
**s 20** ins 1989 No. 17 s 70  
 amd 1999 No. 87 s 6(2)–(5); 2003 No. 3 s 24  
 om 2004 No. 52 s 90

**Complaints for certain offences**

**s 21** ins 1989 No. 17 s 70  
 amd 1999 No. 87 s 11 sch; 2003 No. 3 s 24A  
 om 2004 No. 52 s 90

**Relationship with Criminal Law (Rehabilitation of Offenders) Act 1986**

**s 22** ins 1999 No. 87 s 7  
 om 2004 No. 52 s 90

**PART 5—TRANSITIONAL PROVISIONS**

**pt hdg** ins 1999 No. 87 s 8

**Division 1—Criminal Law Amendment Act 1999**

**div hdg** ins 2003 No. 3 s 25  
 om 2004 No. 52 s 91

**Transitional provision for Criminal Law Amendment Act 1999**

**s 23** ins 1999 No. 87 s 8  
 sub 2004 No. 52 s 91

**Division 2—Sexual Offences (Protection of Children) Amendment Act 2003**

**div 2 (ss 24–25)** ins 2003 No. 3 s 26  
 om 2004 No. 52 s 91